IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

I.T.A. No. 438 of 2001

AND

I.T.A. No. 482 of 2001

AND

I.T.A. No. 483 of 2001

AND

I.T.A. No. 495 of 2001

AND

I.T.A. No. 04 of 2003

AND

I.T.A. No. 05 of 2003

AND

I.T.A. No. 19 of 2003

AND

I.T.A. No. 20 of 2003

AND

I.T.A. No. 33 of 2003

AND

I.T.A. No. 35 of 2003

AND

I.T.A. No. 36 of 2003

AND

I.T.A. No. 37 of 2003

AND

I.T.A. No. 38 of 2003

AND

I.T.A. No. 39 of 2003

Date of decision: 16th October 2003

For the approval of:

Hon'ble Chief Justice S.H. Kapadia.

Hon'ble Mr. Justice M.M. Ghildiyal.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

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IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

I.T.A. No. 438 of 2001

The Commissioner of Income-tax,
Meerut & another --- Appellants

Vs.

Atwood Oceanics International S.A.
as agent of Mr. Gene Little ---- Respondent

AND
I.T.A. No. 482 of 2001

The Commissioner of Income-tax,
Meerut & another --- Appellants

Vs.

Atwood Oceanics International S.A.
as agent of Mr. E. Tigga ---- Respondent

AND
I.T.A. No. 483 of 2001

The Commissioner of Income-tax,
Meerut & another --- Appellants

Vs.

Atwood Oceanics International S.A.
as agent of Mr. Donald Applegate ---- Respondent

AND
I.T.A. No. 495 of 2001

The Commissioner of Income-tax,
Meerut & another --- Appellants

Vs.

Atwood Oceanics International S.A.
as agent of Mr. G. Excell ---- Respondent

AND
I.T.A. No. 04 of 2003

The Commissioner of Income-tax,
Dehradun & another --- Appellants

Vs.

Atwood Oceanics International S.A.
as agent of Mr. W.M.C. Intosh ---- Respondent

AND
I.T.A. No. 05 of 2003

The Commissioner of Income-tax,
Dehradun & another --- Appellants

Vs.

Atwood Oceanics International S.A.
as agent of Mr. William Fontenot ---- Respondent

AND
I.T.A. No. 19 of 2003

The Commissioner of Income-tax,
Dehradun & another --- Appellants

Vs.

Atwood Oceanics International S.A.
as agent of Mr. G. Eldred ---- Respondent

AND
I.T.A. No. 20 of 2003

The Commissioner of Income-tax,
Dehradun & another --- Appellants

Vs.

Atwood Oceanics International S.A.
as agent of Mr. Gary Wells ---- Respondent

AND
I.T.A. No. 33 of 2003

The Commissioner of Income-tax,
Dehradun & another --- Appellants

Vs.

Atwood Oceanics International S.A.
as agent of Mr. J. Hewson ---- Respondent

AND
I.T.A. No. 35 of 2003

The Commissioner of Income-tax,
Dehradun & another --- Appellants

Vs.

Atwood Oceanics International S.A.
as agent of Mr. K. Repper ---- Respondent

AND
I.T.A. No. 36 of 2003

The Commissioner of Income-tax,
Dehradun & another --- Appellants

Vs.

Atwood Oceanics International S.A.
as agent of Mr. R. Hinnunt ---- Respondent

AND
I.T.A. No. 37 of 2003

The Commissioner of Income-tax,
Dehradun & another --- Appellants

Vs.

Atwood Oceanics International S.A.
as agent of Mr. Verdun Lewis ---- Respondent

AND
I.T.A. No. 38 of 2003

The Commissioner of Income-tax,
Dehradun & another --- Appellants

Vs.

Atwood Oceanics International S.A.
as agent of Mr. J. Batte ---- Respondent

AND
I.T.A. No. 39 of 2003

The Commissioner of Income-tax,
Dehradun & another --- Appellants

Vs.

Atwood Oceanics International S.A.
as agent of Mr. M. Cross ---- Respondent

Mr. S.K. Posti, Counsel for the appellants.
None appears for the respondent, though served.

Coram: **Hon'ble S.H. Kapadia, C.J.**
Hon'ble M.M. Ghildiyal, J.

Date: 16th October, 2003:

ORAL JUDGMENT: (Hon'ble S.H. Kapadia, C.J.)

1. This group of appeals involve common question of law and fact and therefore they are disposed of by this common judgment.

For the sake of clarity we hereby mention the facts in Income Tax Appeal No. 438 of 2001.

2. **FACTS:**

M/s Atwood Oceanics International Company was the representative assessee of its employee – Gene Little who was employed during the accounting year ending 31st March 1983 relevant to the assessment year 1983-84 on off shore drilling rig operating in Bombay High for oil exploration in the Continental Shelf of India for ONGC. The return of income was filed on 17th April 1986. Original assessment was done on 19th April 1986 u/s 143(3) of the Income Tax Act, 1961 on the total income of Rs. 1,34,729/-.

In the assessment proceedings, the assessee contended, that the income of the employee was earned beyond 12 nautical miles of Territorial Waters during the year ending 31st March 1983 and was therefore not taxable in the assessment year 1983-84 and therefore no tax perquisite could be added to the income of the assessee. This argument was rejected by the Assessing Officer on the ground that Government of India had issued a notification on 31st March 1983 by which Income Tax Act, 1961 was made applicable to the Continental Shelf as also to the Exclusive Economic Zone which went beyond 12 nautical miles. According to the A.O the notification came into

force w.e.f. 1st April 1983 and therefore the income of the employee earned during the previous year 1982-83 became taxable during the assessment year 1983-84. Being aggrieved by the order passed by the A.O. the matter was carried in appeal to Commissioner of Income-tax(Appeals). The said appeal was allowed. Being aggrieved the department carried the matter in appeal to the Tribunal, the appeal has been dismissed by the Tribunal, therefore, the department has come by way of appeal u/s 260A of the Income Tax Act to this Court.

3. ARGUMENTS:

Mr. Posti, learned Standing Counsel for Union of India contended that by the notification issued by Government of India on 31st March 1983 u/s 6(6) and u/s 7(7) of Territorial Waters, Continental Shelf and Exclusive Economic Zone Act, 1976, the Income Tax Act was made applicable to Exclusive Economic Zone w.e.f. 1.4.1983. He contended that by virtue of Article 297 of the Constitution, continental shelf was a part of India even before the above notification and therefore the salary earned by the assessee(employee) before 1.4.1983 working on the rig located beyond 12 nautical miles was taxable during the assessment year 1983-84. He relief upon various judgments of the Supreme Court and the High Courts in support of his contention.

None appeared for the assessee respondent though served.

4. **ISSUES:**

In this appeal we are required to answer two questions of law. They are as follows:

QUESTIONS:

(1) "Whether, the Tribunal was right in holding that the Continental Shelf did not form part of India prior to 1.4.1983 for the purposes of Income Tax Act, 1961?"

(2) "Whether, the Tribunal was right in holding that salary earned by the employee for services rendered

on the rig before 1.4.1983 in the off shore area outside the Territorial Waters of India was not chargeable to tax under Income Tax Court, 1961 for the assessment year 1983-84?"

5. OUR ANSWERS:

For reasons given hereinafter we answer both the above questions in the affirmative i.e. in favour of the assessee and against the department.

6. **REASONS:**

In this appeal we are concerned regarding taxability of income earned by a foreign technician, employee, on the rigs located in the continental shelf and the economic zone but beyond territorial waters of India during the accounting year ending 31st March 1983. On 31st March 1983, Government of India issued notification No. GSR-304(E) under section 6(6) and section 7(7) of Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act 1976(hereinafter referred to for the sake of brevity as the said Act 1976). By the said notification the provisions of the Income Tax Act were made applicable from 1.4.1983 to the Continental Shelf and Exclusive Economic Zone. It is important to note that in this case we are concerned with the concept of Taxable Territory of India under Income Tax Act. 1961. This is important as it is only by virtue of notification dated 31st March 1983 that the Continental Shelf and the Exclusive Economic Zone became part of the taxable territory w.e.f. 1.4.1983. Therefore, the said tax could not have been levied on the income which accrued in the accounting year ending 31st March 1983 when the territory in which it accrued was not the taxable territory to which the Income Tax Act applied. To levy the tax the income must accrue in the territory to which the Income Tax Act applies. In this case Article 297 of the Constitution is not relevant. For the purposes of deciding

this matter the only relevant issue is whether the income earned by a non-resident accrued in a taxable territory prior to 1.4.1983. On facts it is clear that the foreign technician had earned salary income before 1.4.1983 by working on the oil rigs, located beyond 12 nautical miles and therefore he was not taxable for assessment year 1983-84. Our view is supported by the judgment of the Madras High Court in the case of Commissioner of Income-tax Vs. Ronald William and others reported in 215-ITR page 638 and also by the judgment of the Bombay High Court in case of McDermott International Vs Union of India reported in 173-ITR-155. The various judgments of the Supreme Court cited by Mr. Posti on behalf of the revenue has no application to the facts of the present case as in those judgments the facts related to amendment of the Income Tax Act either by the Finance Act or by Tax Law Amending Act which is not the case herein. In the present case there is only a notification issued by the Central Government, that notification is issued not under the Income Tax Act but under the said Act 1976.

7. For aforesaid reasons, we answer both the above questions in the affirmative i.e. in favour of the assessee and against the department.

8. Accordingly, all the above appeals are disposed of. No order as to costs.

(M.M. Ghildiyal, J.) **(S.H. Kapadia, C.J.)**

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